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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Halimatou Sow & Ousmane Sow,

Plaintiffs,

v.

Evelyn Upchurch, Director, USCIS Texas Service Center; **Dr. Emilio T. Gonzales**, Director, U. S. Citizenship and Immigration Services; **Michael Chertoff**, Secretary, U. S. Department of Homeland Security,

Defendants.

Case No. 08cv3600 (VM)

A Civil Action

**COMPLAINT FOR
MANDAMUS RELIEF**

COME NOW Plaintiffs, Halimatou Sow and Ousmane Sow, by and through their counsel, Matthew J. Harris, and hereby request this Court to issue a Writ of Mandamus to order the U. S. Citizenship and Immigration Services ("USCIS") to adjudicate in a timely manner Plaintiff Halimatou Sow's Refugee Asylee Relative Petition, form I-730 (the "Petition") on behalf of her husband, Ousmane sow.

I. INTRODUCTION

1. The Petition was filed with and remains within the jurisdiction of the Defendants, who have improperly withheld action on it to Plaintiffs' detriment.

2. Plaintiff Ousmane Sow, as lawful husband to Asylee Plaintiff Halimatou Sow, is eligible to receive the benefit of Plaintiff Halimatou Sow's Petition and be granted the status of asylee.

3. Defendants are charged by law with the statutory obligation to adjudicate Plaintiffs' Petition.

II. PARTIES

4. Plaintiff Halimatou Sow (A 93-427-705) is a native and citizen of the Republic of Guinea. She now resides in Bronx, New York..

5. Plaintiff Ousmane Sow (A 793-427-705) is a native and citizen of the Republic of Guinea. He now resides in Bronx, New York.

6. Defendant Evelyn Upchurch is Director of the Texas Service Center of the USCIS, and she is being sued in her official capacity. In this capacity, Director Upchurch is in charge of the service center where Plaintiffs' Petition was properly filed.

7. Defendant Dr. Emilio T. Gonzales is Director of the USCIS, and he is being sued in his official capacity. He is generally charged with the administration of benefits governed by the Immigration and Nationality Act.

8. Michael Chertoff is the Secretary of Homeland Security. This suit is brought against him in his official capacity. Chertoff is responsible for the implementation and enforcement of the immigration laws and it is his delegation of

authority to administer the immigration laws to USCIS that permits its officials to act under color of authority of the United States.

III. STATEMENT OF JURISDICTION

9. This Court has jurisdiction over the present action pursuant to 28 U. S. C. Section 1331, general federal question jurisdiction; 28 U. S. C. Section 1361, authorizing court action to compel an officer of the United states to perform his or her duty; 5 U. S. C. Section 555(b); stating a government agency's duty to resolve each matter presented to it in a reasonable amount of time; and 5 U. S. C.706(1), stating the duty of courts to compel agency action unlawfully withheld or unreasonably delayed. Relief is requested pursuant to said statutes.

IV. STATEMENT OF VENUE

10. Venue is proper in this Court pursuant to 28 U. S. C. Section 1391(e), as amended, which provides that in a civil action in which each defendant is an officer or employee of the United states or any agency thereof acting in his or her official capacity, or under color of legal authority, or any agency of the United states, the action may be brought in any judicial district in which the plaintiff resides. In the present action, both plaintiffs reside in Bronx, New York, within jurisdiction of the this District Court.

V. STATEMENT OF FACTS

11. Plaintiffs Halimatou Sow and Ousmane Sow were lawfully married in Bronx, New York on October 31, 2006. A copy of their marriage certificate is attached as Exhibit A.

12. Plaintiff Oumou Diallo was granted status as an asylee through a decision from the Newark, New Jersey Asylum Office on November 22, 2006. A copy of the decision is attached as Exhibit B

13. On December 15, 2006, Plaintiff Halimatou filed a Refugee Asylum Relative Petition, form I-730, with the TEXAS Service Center of the USCIS to extend her asylum status to her husband, Plaintiff Ousmane Sow. A copy of the Receipt Notice from the Texas Service Center is attached as Exhibit C.

15. To this date, Plaintiffs have not received a decision from the USCIS on their Petition nor have they received any communication from the USCIS requesting more information.

16. According to information available on the USCIS web site, the Service has now completed I-730 applications that were filed on or before March 27, 2007. A print out of this information is attached as Exhibit D. Since Plaintiffs' I-730 was filed on December 15, 2006, a response to their application is more than three months behind the normal schedule.

VI. CAUSE OF ACTION

16. Defendants have willfully and unreasonably delayed the adjudication of, indeed have refused to adjudicate, Plaintiffs' Petition. This delay and refusal has deprived Plaintiff Ousmane Sow of the benefit of an asylee status.

17. The facts of Plaintiffs' Petition demonstrate that: (1) they have a clear right to the relief requested; (2) the defendant has a clear duty to perform the act in question; and (3) no other adequate remedy is available.

VII. ATTORNEY'S FEES

18. As a result of Defendants' failure /or refusal to abide by the Immigration and Nationality Act and other United States statutes, Plaintiffs have been required to incur the cost of litigation and reasonable attorney's fees in preparing this petition for Writ of Mandamus to compel the USCIS to fulfill its duty. Therefore, Plaintiffs seek full recovery of all costs of litigation and reasonable attorney's fees incurred as a result of defendants' wrongful conduct.

VII. PRAYER FOR RELIEF

WHEREFORE, premises considered, Plaintiffs respectfully pray that this Court:

- (a) Assume jurisdiction over this matter,
- (b) Enter an order requiring Defendants to timely adjudicate Plaintiffs Refugee Asylee Relative Petition (I-170),
- (c) Grant attorney's fees and costs of court; and
- (d) Grant such further relief as this Court deems just and proper.

Respectfully submitted this 11th day of April, 2008,

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CERTIFICATE OF SERVICE

On April 11, 2008, I, Matthew J. Harris, Esq., the undersigned, served the within: COMPLAINT FOR MANDAMUS RELIEF on each person listed below addressed as follows by regular U.S. Mail:

Office of the General Counsel
U.S. Department of Homeland Security
Washington, D.C. 20528

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Evelyn Upchurch, Director
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